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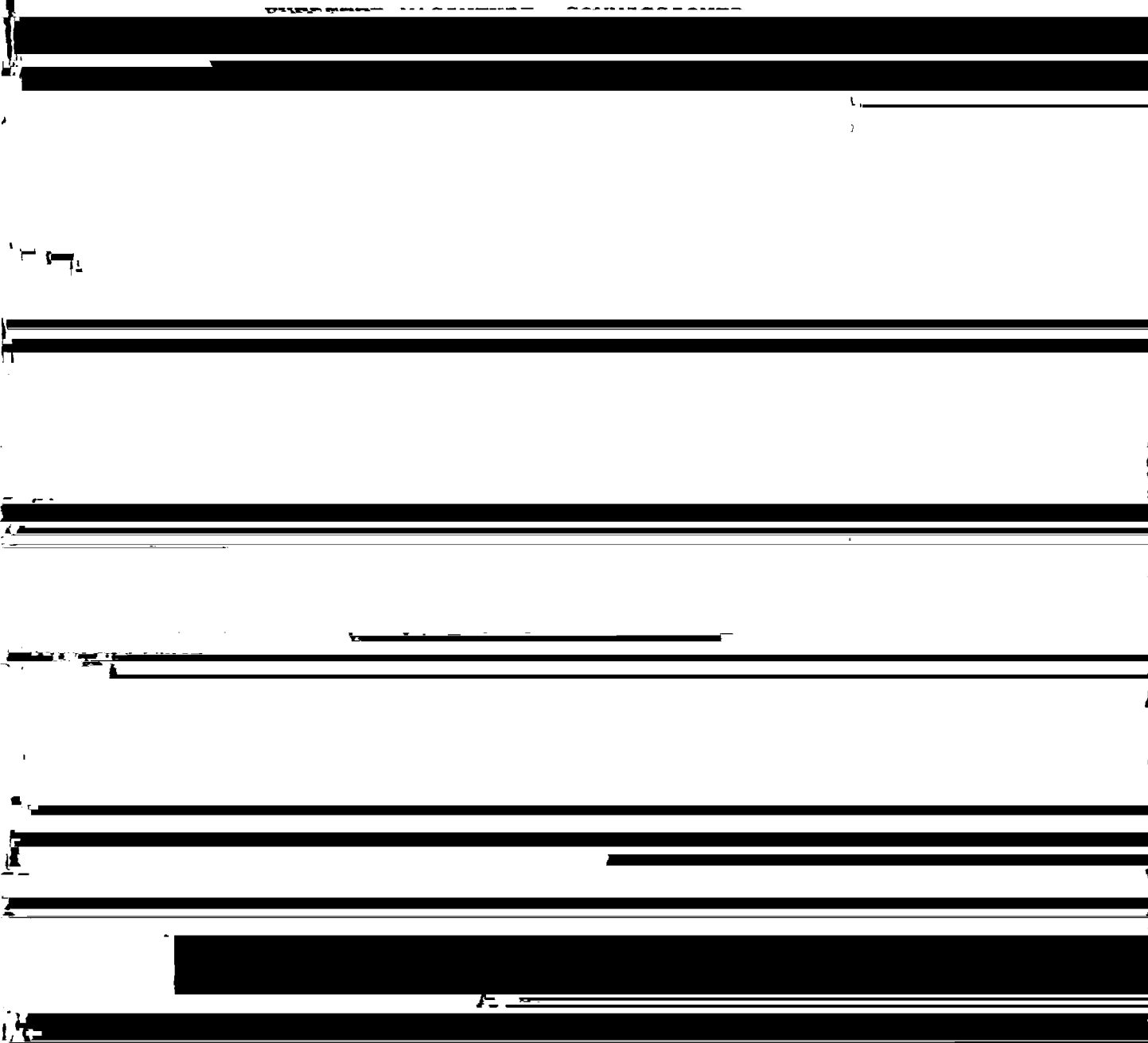
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No 32

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Not for Release before Wednesday p.m.  
July 19, 1967

Presentation by



University of Rhode Island  
Conference on Social Studies  
Summer School 1967

GOVERNMENT REGULATION OF BUSINESS -  
THE ROLE OF THE FEDERAL TRADE COMMISSION

" . . . There is no long-range, hostility between  
business and the Government. There cannot be.  
We cannot succeed unless they succeed. But  
~~that doesn't mean that we should not meet~~

our responsibilities under antitrust. . . ."

The President's News Conference

Presidents 708 (1962).

The relationship in any country of business to government

Historically, the tenet fundamental to the American free  
enterprise system has been faith in competition. 2/ both

of the game in the rivalry for trade is largely responsible for the rise of the Federal Trade Commission. Woodrow Wilson, who sponsored this Agency, voiced the temper of the times, stating:

"I have been told by a great many men that . . . it is just free competition that has made it possible for the big to crush the little

briefly how the Commission has met those tasks.

Significant to the evaluation of the Commission's role is the fact that Congress in 1914 deliberately set up an administrative agency to parallel to an important extent the

successful antitrust prosecution. The business community, on  
the other hand, also objected to the latitude given judicial







Clearly the Commission's law enforcement function was

~~not considered a punitive one. In this connection even when~~

~~As soon as possible complaints against certain individuals and~~

of major legislation such as the Securities Act of 1933

cement industry does however show what this Agency's industry-wide proceedings and economic inquiries can accomplish. 18/  
In this industry the Commission was faced with a wave of mergers involving acquisitions of ready-mixed concrete companies by cement producers. The ready-mixed concrete companies are critical to the cement industry since they consume 60% of its

product. As a result, if a number of the larger cement companies were able to tie up the more significant ready-mixed concerns by merger, their competitors would be frozen out of a crucial segment of this market. The anticompetitive consequences are obvious. The Commission's policy statement on vertical mergers in cement setting forth the standards by which such acquisitions will be evaluated and the preceding economic inquiry and staff report have apparently halted the trend

the Commission gives expression to its experience based on past enforcement actions, investigations or other proceedings as

of ordinary usage. Accordingly, the Commission determined that the use of such terms as "leakproof", "guaranteed leakproof" or similar representations had the capacity and tendency to





to the consumers. In short, the order did no more than to remove the restraints on competition shackling the pricing freedom of



on ensuring for all the equal opportunity to compete on the  
basis of efficiency, not on how business should be run.

other merger cases typifies the basic purpose common to all antitrust enforcement, namely, the restoration of competition with the least amount of business regulation. Certainly the

far more likely to restore competition to the market than an attempt through government regulation to guide the combined firms to competitive behavior. Regulation of that nature is rarely likely to be effective and probably in no case would justify expenditure of the governmental resources necessary to achieve even a minimal result.

Finally, the Commission is unique among regulatory agencies in the broad spectrum of industry with which it is concerned.

of the nature of its relationship to business, the Commission is in a better position to maintain its independence from those regulated than those agencies concerned with more narrow segments of the economy. This advantage, I must acknowledge, does not stem from superior virtue residing in the Commissioners or the Commission's staff; rather it must be ascribed to the statutes

of this aspect of the Commission's activities. There the Commission's order among other matters prohibited a scheme

gain access to homes and dismantle furnaces without the owner's permission, followed by a refusal to reassemble on the false representation that this would involve great danger of fire, gas or explosion. Similar fraudulent practices also enjoined were misrepresentations to the effect that competitors of the furnace manufacturer were out of business and that parts

area are difficult and complex, say in contrast to a decision  
to ~~needed~~ for a violation of the Postal Fraud Statutes For

conclusion may well lead to acceptance of private regulation in place of our traditional reliance on the competitive market.

The empirical evidence available on this point does not necessarily support Galbraith's thesis. Economists more active

that the available economic data in fact indicates that competition is still a force in the market. Dr. Mueller, Chief Economist of the Federal Trade Commission, has testified that over in those industries where concentration is highest

the market position of industry leaders is being eroded. 30/ According to Dr. Mueller, a study of post-war trends shows that concentration has in fact tended to decline across a broad front in the producer goods sector of manufacturing, which

development casts considerable doubt on the theory underlying  
the "New Deal" State. For if the theory had validity it

is precisely in the producer goods sector where economies of scale (efficiency derived from size) might be expected to give further impetus to the growth of the large corporation leading in turn to additional concentration. It appears, therefore, that it is not economic determinism which will doom the competitive market. If the free enterprise system dies, it will perish rather from a lack of the will to preserve it.

It is my hope that this country will adhere to the national commitment to competition, for it has served the nation well. The choice facing us now is critical. If active steps are not taken to preserve a viable climate for competition, in a few years the opportunity may have passed us by. The decision made or not made in this area will have a crucial impact on both the country's private and public life. Unless the American

government regulation is equally unattractive. 34/

Among the fundamental assumptions of antitrust is the view that all should have equal rights to engage in and conduct businesses in any manner that will not endanger the similar rights of others, and that consumers and producers should have

equal access to markets and natural resources. This is not

complexities of the modern society will prevent the pure application of this principle, but antitrust will prevent

its wholesale obliteration 35/